

## MEETING MINUTES CITY OF MILPITAS

**Minutes of:** Regular Meeting of the Milpitas City Council  
**Date:** Tuesday, October 1, 2019  
**Time:** 6:00 PM Closed Session  
7:00 PM Open Session  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas

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### CALL TO ORDER

Mayor Tran called the meeting to order at 6:01 PM. City Clerk Mary Lavelle called the roll.

**PRESENT:** Mayor Tran, Vice Mayor Dominguez and Councilmembers Nuñez

**ABSENT:** Councilmember Phan was absent at roll call and arrived at 6:02 PM. Councilmember Montano arrived for the Open Session at 7:00 PM.

### CLOSED SESSION

City Council convened in Closed Session to discuss two matters listed on the agenda, b and c. Item (a) on the agenda was not considered.

City Council convened at the dais for the Open Session regular agenda at 7:02 PM.

### ANNOUNCEMENT

City Attorney Chris Diaz stated out of Closed Session there was no reportable action.

### PLEDGE

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

### INVOCATION

Mayor Tran offered his own prayer to start the meeting.

### PRESENTATIONS

Mayor Tran proclaimed the following:

Proclaimed October as *National Hispanic Heritage Month*

Proclaimed October as *National Bullying Prevention Month*

Proclaimed *Fire Prevention Week* for the week of October 6 – 12, 2019

### PUBLIC FORUM

Allysson McDonald, resident, noticed that other cities declared climate emergencies. Milpitas' Climate Action Plan was due to be updated so she asked to add the climate emergency onto a City Council agenda.

Rob Means, 1421 Yellowstone resident, wanted speaking time limits of at least two minutes, not one, as changed recently by the Mayor. He mentioned a letter from Advanced Transit Association sent to the Council.

Michelle, a resident, thanked the City Council for the work they do. She thanked members for the improvement on noise behind her house. She wanted a Just Cause Eviction ordinance on October 15 and asked for decisions based on what people were asking for, not on political agendas.

Tom Valore, resident, spoke of Terrace Gardens Apartments. He said those apartments were rented to low income and extremely low income seniors in the community. He was puzzled at the logic that the City Council took to take funds away from that place to give to others (in reference to Community Development Block Grant funds).

Joseph Weinstein, resident, spoke of the new community newspaper owned by local residents. He asked the City Manager to move all advertising to the new paper and website, to support this local homegrown media business.

Voltaire Montemayor, resident, said he spoke Spanish. He offered peace and love to all, with regard to the bullying proclamation.

Jackie Romero, a resident, wore a t-shirt displaying “History Has Eyes on You.” She thanked Council for their work and decisions. She asked to move agenda item no. 12 (regarding theater program) up to be heard earlier, since kids were present and had school the next day.

## **ANNOUNCEMENTS**

Mayor Tran said on October 25 all Milpitas High School alumnae would gather for a celebration of over 50 years of both high schools.

Councilmember Montano reported out from the first Transportation Subcommittee meeting held the previous week. In January, a new law would require carpool lanes with three people in the car. Bi-monthly Subcommittee meetings would be scheduled. She noted that a hotline for potholes would be established.

Building Safety & Housing Director Sharon Goei provided an update on Sunnyhills Apartments. Ms. Goei read a statement on work done with the owner of the apartments complex, along with County of Santa Clara agencies and an affordable housing developer, following several meetings held over the past year. She listed timelines of recent and anticipated actions on development plans for the site.

## **ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. By roll call, none were reported.

## **APPROVAL OF AGENDA**

Motion: to approve the meeting agenda, as submitted, with item no. 10 (public hearing regarding Planning determination) continued

Councilmember Nuñez asked about the location of item No. 12 on the agenda, and staff said it was going to be heard following the scheduled public hearings.

Motion/Second: Councilmember Nuñez/Councilmember Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

## **CONSENT CALENDAR**

Motion: to approve the consent calendar including agenda items no. C1 – C9

Councilmember Nuñez inquired regarding item no. C5 (SAFER grant), on the staffing component and funding firefighters up front. He asked if the City would fund those positions after the grant expired. Fire Chief Sherrard replied yes, those positions were included in the budget forecast for future years.

Motion/Second: Councilmember Nuñez/Councilmember Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

C1. Council Calendars Received City Council calendar for October 2019.

C2. Meeting Minutes Approved City Council meeting minutes of September 17, 2019.

C3. Resolution – office supplies Adopted Resolution No. 8910 authorizing the City Manager to execute an Agreement with Staples Contract & Commercial LLC for office supplies through a Sourcewell Cooperative Procurement Agreement for a 60-months (5-year) combined maximum amount of \$725,000 and authorizing the Purchasing Agent to exercise option years 1 through 4, without further action by City Council, except annual appropriation of funds.

C4. Resolution – SB2 grant	Adopted Resolution No. 8911 authorizing the City Manager to submit an application for \$310,000 in non-competitive grant funding, provided under the California Building Homes and Jobs Act (Senate Bill 2), and to execute the grant agreement and all related documents required to secure the grant, subject to approval by the City Attorney.
C5. 2 Resolutions	<ol style="list-style-type: none"> <li>1) Adopted Resolution No. 8912 accepting the Department of Homeland Security (FEMA) SAFER grant of \$2,336,284 awarded to City of Milpitas, and direct staff to proceed with hiring of six new firefighters no later than the start of the period of performance for the grant which is March 11, 2020.</li> <li>2) Adopted Resolution No. 8913 amending the Classification Plan to authorize adding 6 Full Time Equivalent (FTE) Firefighter Paramedic positions to City’s Authorized Positions List.</li> <li>3) Approved related budget amendment to transfer \$161,127 from Non-departmental Operating Budget to the Fire Department Operating Budget to cover the City’s cost for FY 2019-20.</li> </ol>
C6. Service Agreement	Approved an Agreement with Odyssey Power Corporation for preventive generator maintenance and repair services, for an amount not to exceed \$49,350 in the first year and a total amount not to exceed \$341,182 over the five-year period, subject to annual appropriation of funds.
C7. Energy and Water savings (ESCO)	<ol style="list-style-type: none"> <li>1) Received report on Request for Proposal for Energy and Water Savings performance contract to identify, engineer, install, commission, and maintain Energy Conservation Measures on City facilities and land; and</li> <li>2) Approved and authorized the Interim City Manager to execute a Professional Service Agreement with Engie Services U.S. Inc. for the purpose of conducting an investment grade audit on City facilities and land in the maximum amount of \$150,000.</li> </ol>
C8. Fee Waiver	Received a Fee Waiver request from Sunnyhills Neighborhood Association and moved to waive fees of \$1,112.63 for City of Milpitas costs related to the special neighborhood Halloween event at Augustine Park on October 26, 2019.
C9. Financial Status	Received reports on the City of Milpitas’ third and fourth quarter FY 2018-19 financial status.

## **PUBLIC HEARINGS**

10. Public Hearing - appeal	This public hearing was continued, at the request of the property owner. It regarded an appeal of Planning determination of a non-conforming use at 1831-1841 Tarob Ct. by GeoMax.
11. TASP TADIF Fees	<p>Planning Director Ned Thomas introduced Kevin Riley, a consultant assisting the Planning Department with the update of the Transit Area Specific Plan (TASP), including a fee update. He described the background of the adopted plan and types of fees calculated to be paid by developers for projects in the Transit Area. He defined “BIP” as the Basic Infrastructure Program (infrastructure and land). The TADIF (TASP Area Development Impact Fees) Fair Share Cost Allocation was explained, with a listing of the 2014 costs and allocations. Also displayed was the update in 2019 of those same costs, noting the fees were unchanged over the last five years.</p> <p>Next Mayor Tran opened the public hearing.</p> <p>Kyle Zaylor from The Core Companies spoke to the City Council regarding his company’s 1400 South Main Street project as noted in a letter sent to Council. His company had just learned of the proposal on fee changes in June, while Core was working toward getting a permit. He was concerned on the substantial fee increase to the developer, based on proposed new fees.</p> <p>Allysson McDonald, resident, inquired about linear parks and trails in the TASP area. She would like to have no fees on those, in order to allow residents to be able to walk and ride to businesses, and to encourage that. She did not understand why no fees would be charged to hotels.</p> <p>Voltaire Montemayor, resident, spoke to the Council.</p>

Rob Means, resident, referred to a flat rate per unit for residential development, and the fact that the same rate was charged regardless of size of unit. That was not reasonable, he felt.

Mayor Tran expressed his support for policy alternative 1, which staff suggested to allow deferral of payment until occupancy of development projects occurred.

Councilmember Nuñez asked about a sliding scale, and asked why it was not recommended. Mr. Thomas said the flat rate was established currently. In the future, with the next update, staff may bring sliding scale fees over the next year. He also inquired about the 12 or so projects in the pipeline (allowing deferral of fee until permitted, for the next 12 months only) and staff responded to this and various questions.

Councilmember Phan asked about the timeline that the fee was assessed, and if it was assessed before or after the entitlement process. Mr. Thomas said it was at the time the building permit was applied for (not issued) which occurred after “entitlement” (following Planning Commission approval). Staff responded to him about when fees were calculated and collected for projects in the TASP area.

Councilmember Montano asked questions about the calculation of specific fees and a sliding scale. Mr. Riley responded with information on the past fees, calculation and timing. She referred to the letter the Council had received, and was concerned for Core and fairness of the City toward the applicant. An increase in costs could impact the quality of the new homes built.

Councilmember Phan shared the same concerns as Ms. Montano. Costs increased but fees charged were not increased over the past five years. He inquired why that occurred.

Councilmember Nuñez recalled a prior fees discussion at the Council meeting. He wondered why this fee was a two-step process. Mr. Riley responded on how the recommendation came to this meeting date. The second part of the process was underway and would come back to City Council next year. Mr. Nuñez did not want to do the fees piecemeal but rather to consider the entire study at once.

Vice Mayor Dominguez had questions about TASP, past history and application of fees on hotels. She asked when new hotels would be included in the new fees, based on CEQA application. Mr. Thomas responded that there would be no hotels entitled in the TASP area at this time. Mr. Riley explained, if raising fees only, there would not be any CEQA action.

Councilmember Phan asked why this was sensitive on this date. Mr. Thomas replied that it was actually “catch up” on fees at this time. This action was to bring the TASP up to where it should be, if fees had been updated annually since 2014.

Mayor Tran said he was in favor of the staff recommendation.

Mr. Thomas pointed to one page in the technical memorandum from the consultant regarding amount of fees that would have been collected (loss) if fees had been adjusted annually in the TASP.

Councilmember Nuñez agreed with the Mayor, and being guided by staff, remarked on the fact that prior City staff did not bring these fee increases to the Council in the past several years. He did not agree that it would take one year for the next part of the study to return to City Council.

Motion: to close the public hearing following four speakers

Motion/Second: Councilmember Nuñez/Vice Mayor Dominguez

Motion carried by a vote of: AYES: 5  
NOES: 0

City Manager McHarris commented on the shorter update of one set of fees now, and then later consider changes to the plan and update fees then, as a two step process.

Mr. Riley responded that staff could bring back additional information to City Council in order to make a decision. Staff had tried a simple process with this evening's action. They would come back with criteria and information on hotels, to help with crafting the 2020 update. Consider an approach and bring that back to Council.

City Council agreed with what Mr. Riley offered and wanted figures to know the maximum revenue from TASP fees for 2020.

City Attorney Diaz said with supplemental information at the next meeting, with essentially the same action recommended as this evening, it would be okay to continue the item. It required the City Council to re-open the hearing and continue it for two weeks or further.

Motion: to re-open the public hearing, to move to continue it to a future City Council meeting, seeking more information from staff on the TASP fee increase, and with no action taken at this meeting on the staff recommended resolution

Motion/Second: Councilmember Nuñez/Councilmember Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

No vote was taken on the recommendation to adopt a resolution authorizing the City Manager to update the Transit Area Development Impact Fees (TADIF) based on current cost estimates for infrastructure items listed in the TASP Basic Infrastructure Program (BIP) and to allow deferral of TADIF payment until approval of occupancy for those projects listed in Exhibit B to the Resolution, with the deferred payment provision to expire 12 months after the effective date of the fee increase.

## COMMUNITY SERVICES

### 12. Community Theater Program

Recreation Director Renee Lorentzen presented a report on a study regarding the youth theater contract program and the use of the Community Center Auditorium. She described the scope of the comprehensive study completed along with history on the former Rainbow Theater (city operated program) and Center Stage Performing Arts (contract program). She detailed a cost analysis, listing proposed structural changes, which followed a survey and outreach efforts conducted in the community.

Next, Mayor Tran invited public comments, limited to one minute each.

A woman thanked the Council and the hard work of City staff, working collaboratively with the theater parents, leaders and children. She was very happy with the proposed program to continue theater arts program in the City.

Voltaire Montemayor, a resident, mentioned eminent domain, a bigger place, having a great program for the whole region.

Jackie Romero asked Council to notice all the audience members wearing white in solidarity with the theater group supporters. It was important to listen to stakeholders and work collaboratively, which happened in this case. She mentioned over 1,000 signatures on a petition that was signed online.

Allysson McDonald, resident, was pleased with the result of this study and effort, especially with the City recovering more of the costs. She urged the City Council to prioritize public use of the auditorium over private rentals.

A young woman thanked the Council for its support of the theater. Recently, try outs in the auditorium yielded 60 kids for the new show. She was concerned about having only one weekend for performances of shows.

A young woman asked how the Council would choose the Director by contract: would it be based on prior qualifications or other factors, and she admired the current director.

A woman spoke of good turnout for the recent audition. She was concerned about one small room allocated for practicing the shows, with kids of varying ages.

A young man referred to a committee voting on what show the theater group was doing for the season. He asked if it would be a set committee for one season or something else.

Evelyn Chua, resident, thanked the Mayor and Councilmembers for finding a solution to this issue, along with the City Manager and Recreation Director along with the parents of the theater youth. She liked the solution proposed.

A young man followed up on his sister's comments about how hard it would be to do five shows over one weekend. That was a lot, along with other responsibilities.

A man was concerned about the number of participants in each show and the smaller number of performances for each show (if only six).

A woman was very happy that the City and theater group worked together to make it happen. Lots of history of the program and it needed to continue. She thanked City Council.

Lisa Baker, resident, thanked the City Council. Residents paid their taxes and the theater was supported by the people who lived here. A community theater group should be kept for the community, not for private rentals.

A young woman felt that on shortening the time frame, it was barely enough for a quality production.

Ms. Lorentzen came to the podium to respond to many of the questions by speakers.

Mayor Tran commented first. He liked the study, having become more informed about programs at the Community Center. He referred to the Milpitas Library which had a great stage and auditorium room, as a potential location to explore for performance and rehearsal. He was fine with the one-weekend, five performances proposed and supported the proposal.

Vice Mayor Dominguez knew performing arts were important to all of the City Council and the community. She thanked staff for prioritizing this topic and the time commitment to the outreach process done.

Councilmember Nuñez asked about the Arts Commission (not Parks and Recreation) for the show selection committee. Staff responded on the usual role of Arts Commissioners, while it did not preclude having a Parks, Recreation and Cultural Resources Commissioner on the committee. He inquired about the School District and if it would be involved. Staff replied MUSD could be involved in a potential joint use area, and perhaps on the selection committee. Mr. Nuñez asked if there were groups waiting to sign up to use the auditorium for the 156 dates once the theater show dates were reduced.

Councilmember Phan was impressed with several of the student theater participants, and hoped their concerns were answered. Ms. Lorentzen responded to various financial questions he had. He fully supported the idea of remaining flexible to allow a show to be performed over two weekends (not just one) if space was available.

Mayor Tran asked if the City staff support amount of \$72,560 could be shifted to the contractor (on the cost analysis slide). The Recreation Director responded that it partly depended on the

revenue of the shows performed, while the City did propose to do the marketing and branding of the theater program.

Councilmember Montano thanked city staff and Mayor Tran for their efforts, and she appreciated the Mayor's passion for this program. She agreed with staff recommendations.

Motion:

1. To approve restructuring of the youth theatre contract program and performing arts class opportunities resulting in: (a) increased availability for residents' use of the Community Center Auditorium; (b) creation of Performing Arts Brand and Marketing; and (c) expansion of performing arts opportunities including shorter, less expensive programs for children with subsidy through the Milpitas Assistance Program; and greater variety, including cultural music and dance; and, (d) a contract structure for the program's Director to go to a flat rate for each production, including a percentage of ticket sales revenue, and
2. To direct staff to develop additional recommendations for City Council consideration during the FY 2020-21 budget process for additional opportunities based on community feedback/interest.

Motion/Second: Councilmember Montano/Vice Mayor Dominguez

Motion carried by a vote of: AYES: 5  
NOES: 0

## **PUBLIC SAFETY**

### **13. Unmanned Aircraft System (UAS)**

Milpitas Police Captain Jared Hernandez presented information about the Unmanned Aircraft System (UAS or "drone") policy, the Federal Aviation Authority, oversight authority, laws and policy, and the fiscal impact of such a program. He displayed visuals, with an example video obtained from an aircraft over the hills in Milpitas. This technology would be useful to other city departments: Fire, Public Works, Engineering and Building. Captain Hernandez described elements of the proposed policy along with costs of approximately \$55,000 - \$65,000 in total. Following the next steps for this program, including outreach, the Milpitas Police hoped to implement it in January of 2020.

Mayor Tran stated he was fully in favor of this technology, for many beneficial uses once deployed, similar to neighboring cities that use drones presently. He inquired about insurance and appreciated various uses. It could also be used by the PIO to showcase the City.

Councilmember Montano was glad that technology would be in use for first responders. She asked what the distance would be that a drone could view. Staff replied it depended on the vendor's product, and there were two primary companies for law enforcement drones.

Councilmember Nuñez asked, regarding costs, if the those noted covered the costs of buying the units and training of the (8) operators. He was fully supportive and wanted to make sure that the Fire Department could take advantage of the technology, and to consider buying eight total devices with some designated for Fire, distinct from Police use.

Councilmember Phan asked if costs were mostly for training and certifications, or was the bulk for the equipment. Staff replied equipment. He sought more details on the specifications of the drones, different from commercial products at the mall. Mr. Phan asked for how long the recordings were maintained (based on records retention) and about the purpose of UAS. He expressed concern for the community's privacy rights.

Councilmember Montano referred to comments from Mr. Nuñez about buying eight units, while she noted that technology changed rapidly. She suggested purchasing four units and then see how it goes before purchasing more.

Mayor Tran asked for public comments and Voltaire Montemayor addressed the Council.

Police staff received the comments and input from the Mayor and City Council, and no vote was taken on this item.

## **LEADERSHIP**

### **14. Clarification on Rules Subcommittee**

Mayor Tran announced this would be the last item discussed at this meeting, at 11:26 PM.

City Manager Steve McHarris and Assistant City Manager Ashwini Kantak introduced this topic. She provided background information and then listed six questions to Council about Agenda Item Request Forms.

Mayor Tran responded briefly to Ms. Kantak that most of the questions did need further discussion and input to staff on those 1 – 6. He noted some items could wait until the CIP was formed next year, and others perhaps wait for the budget. If three members during a meeting asked for an item to go on the next Council agenda, he felt that was ok to bypass the Rules Committee. Time management was key. He would limit the total number of these request items to five on any City Council agenda.

Councilmember Nuñez felt these questions were administration questions, not Council questions. He liked that it was a pilot program and wanted to keep the process to make it better. Consistency would make the Council better at this. He wanted to talk about his proposed items, before it got onto a City Council agenda. Maybe cue up the items, as the Mayor suggested. Mr. Nunez wanted to allow those who submitted forms to be able to speak on the item described.

Vice Mayor Dominguez went through the listed questions and responded to those. She agreed with controlling the items for the next agenda, but not control the topics. This would get a pipeline of ideas going (list of the ideas submitted).

Mayor Tran felt there needed to be more parameters. Limit the number of requests to be submitted at a time. He suggested to wait until Rules meets to review.

Councilmember Nuñez and Vice Mayor Dominguez commented further on the questions posed by staff. Then Vice Mayor Dominguez suggested the group might discuss this at the retreat.

City Attorney Diaz replied that perhaps the entire Council could attend the Rules Subcommittee meeting scheduled on Friday, October 4, to get these items addressed and respond to staff questions No. 1 – 6. The meeting could include the full City Council if noticed properly.

Vice Mayor Dominguez wanted to follow what the City Attorney described. Mr. Diaz then confirmed all five Councilmember could be invited to the Rules Subcommittee meeting and it would be listed on the agenda as a special Council meeting. All could participate on Oct. 4.

### **15. Facility Use Manual**

This item was not heard.

### **16. Training/Events policy**

This item was not heard.

## **REPORTS**

None of the Agenda Item Request Forms were discussed, in agenda items no. 17 – 25.

## **NEXT AGENDA**

### **26. Preview next agenda**

Noted receipt of list of agenda items for October 15, 2019 City Council meeting agenda.

## **ADJOURNMENT**

Mayor Tran adjourned the joint meeting at 12:09 AM on Wednesday, October 2 in memory of Sandeep Dhaliwal, Harris County, TX Sheriff's Deputy, who was killed the previous weekend.

**The foregoing minutes were approved by Milpitas City Council on October 15, 2019.**

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**Mary Lavelle, Milpitas City Clerk**



